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Delaware Department of Correction Compliance Report

Submitted Pursuant to the Memorandum of Agreement Between the
United States Department of Justice and the State of Delaware
Regarding the Delores J. Baylor Women's Correctional Institution, the
Delaware Correctional Center, the Howard R. Young Correctional
Institution and the Sussex Correctional Institution

December 30, 2008

Department of Correction

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INTRODUCTION

This Compliance Report is submitted pursuant to the Memorandum of Agreement (“MOA”) between the United States Department of Justice (“DOJ”) and the State of Delaware (the “State”) regarding the Delores J. Baylor Women’s Correctional Institution (“BWCI”), the Delaware Correctional Center (“DCC”)¹, the Howard R. Young Correctional Institution (“HRYCI”) and the Sussex Correctional Institution (“SCI”).² The purpose of this Compliance Report is to provide the DOJ with current information regarding the State’s progress implementing the Delaware Department of Correction Action Plan dated April 30, 2007 (the “Action Plan”), and steps taken by the State to ensure compliance with each of the substantive provisions of the MOA.³

Key Accomplishments

Effective July 1, 2007, the State entered into a two-year contractual agreement with Correctional Medical Services (“CMS”) to provide medical and mental health services to the inmate population housed at all of the Department of Correction (“DOC”) facilities, including the four Facilities subject to the MOA. Under the contract, CMS is required to fully staff the medical and mental health services provided to offenders housed at all DOC facilities. CMS employs a Regional Medical Director, Regional Vice President, Regional Ombudsman, Regional Manager, Regional Mental Health Director, Regional Psychiatry Director, Regional Dental Director and

¹ On June 3, 2008, Delaware Governor Ruth Ann Miner signed a bill renaming the Delaware Correctional Center, the James T. Vaughn Correction Center.

² Baylor, HRYCI, DCC, and SCI are also referred to individually as a “Facility” and collectively as the “Facilities” in this Compliance Report.

³ This Compliance Report is prepared entirely as a result of the compromise of disputed claims brought by the United States Department of Justice against the State of Delaware. Nothing contained herein shall constitute or is intended to be interpreted as an admission of legal liability or an independent statement of fact. The statements contained herein are intended to be without prejudice to future or collateral legal actions, defenses or positions on behalf of the State of Delaware, or its agencies, departments, and employees. Additionally, the statements and documented actions by the State contained herein are subsequent remedial measures as set forth in Federal and State Rules of Evidence 407 and are taken with the express purpose to remediate any identified deficiency in the provision of healthcare services to inmates within the custody of the State of Delaware Department of Correction.

State Director of Nursing (“DON”). Further, at each Facility, CMS employs a site Health Services Administrator (“HSA”) and DON to oversee the medical and mental health care provided to the inmate population.

In addition to expanded staffing requirements established in the July 1, 2007 CMS contract, an Audit Tool was implemented under the Third Amendment to the previous service contract between CMS and DOC. This Audit Tool was carried forward into the July 1, 2007 CMS contract. The Audit Tool is used to evaluate CMS compliance with written performance standards that are based on standards established by the National Commission on Correctional Health Care (“NCCHC”), CMS protocols in effect at the time of the audit; and any policies, protocols, procedures, or clinical pathways currently existing or adopted in the future by DOC. Pursuant to the service contract, audits are performed on a quarterly basis in the areas of Intake, Chronic Care, Specialty Referrals, Mental Health Services, Sick Call visits and Medication Administration. This audit mechanism provides for financial penalties that are imposed if CMS does not achieve specific compliance targets at a Facility. In addition, at the end of each audit period, CMS is required to submit a specific Facility Corrective Action Plan based on the audit results. This ensures that the Facility has a plan in place to address deficiencies found during the audit process and use the process to improve systems issues.

Substantial modifications and improvements to the Delaware Automated Correction System (“DACS”) medical module, which are described at length in the Action Plan,⁴ were implemented at all DOC facilities. Additional enhancements to DACS and medical vendor staff training are ongoing. The updated DACS medical module serves as a vital tool for ensuring compliance with medical and mental health care standards. Further, the updated DACS system allows the DOC and CMS to obtain statistical information regarding types of inmate care being provided and areas of need at each of the Facilities.

⁴ See the DOC Action Plan, Section 3a , *available at*:
<http://doc.delaware.gov/pdfs/Delaware%20DOC%20Action%20Plan.pdf>

MEDICAL AND MENTAL HEALTH CARE

(1) Standard:

The DOC continues to strive for compliance with each substantive standard set forth in the MOA. OHS and CMS meet weekly to address problem areas and establish timelines and plans for addressing these concerns. Additionally, OHS solicited advice from experts and consultants when needed. For example:

- The OHS worked closely with Monitoring Team experts to draft any additional policies and procedures as necessary.
- The Delaware Divisions of Health and Social Services (“DHSS”) and Public Health (“DPH”) were consulted regarding immunization and communicable disease reporting practices. In addition, DOC has been working with DPH on obtaining and administering Hepatitis and influenza immunizations.
- The OHS is also working with DPH regarding possible HIV, Syphilis, Gonorrhea and Chlamydia testing of offenders. Currently, Syphilis testing is being conducted at Baylor Women’s Correctional Institution. Additional testing would be targeted to those offenders who are at high risk of contracting such diseases.
- The OHS worked with the Delaware Division of Substance Abuse and Mental Health to develop protocols for providing methadone maintenance to pregnant opiate addicts incarcerated in a DOC Facility, in accordance with MOA requirements.
- The OHS consulted with the DHSS, Office of the Medical Examiner (“OME”) regarding autopsies and medical file reviews of all offenders whose death occurs while in DOC custody. OME has now agreed, and is conducting full autopsies for any inmate death in custody.

(2) Policies and Procedures:

On November 19, 2007, the DOC implemented its health care policies under Chapter 11, Health Services of the DOC policy manual.⁵ In addition, DOC recognizes the need to consider policy development and implementation on a continual basis. During the 2008 site visits, the Monitoring Team was presented with draft versions of site specific procedures for all Facilities covered by the MOA. At the recommendation of the Monitoring Team, DOC and CMS continue to work collaboratively on changes to the site procedures. An updated version of site procedures will be presented to the Monitoring Team for their review during the spring 2009 audit cycle. All additional policies and Facility-specific procedures may be submitted to the DOJ for review and suggested changes, before they are implemented.

(3) Record Keeping:

(a) As noted above, the DACS updated medical module was implemented in 2007. Enhancements to the medical module were made in the areas of intake screening, appointment scheduling, medical transfers, chronic care, sick call, outside consult tracking, tracking pregnancy care of offenders, mental health care, administrative segregation, dental care and general reporting functions. CMS has established a policy that designated staff members are to be assigned “Super User” status for training purposes. The “Super User” is responsible for ongoing DACS training of medical and mental health staff at each Facility. Further, CMS has established DACS training as part of their new employee orientation process to ensure the staff is aware of the DACS functions available and have the ability to utilize DACS prior to the start of their employment at the Facility. Additional enhancements to the DACS system have been implemented, with continual enhancements anticipated.

(b) As of December 1, 2008, 2008 CMS reports that all Facility medical records positions required under the DOC-CMS contract, with the exception of a .5 FTE, are currently staffed. CMS also reports that they are actively recruiting a Regional Medical Records Supervisor. Once hired, the Regional Medical Records Supervisor will ensure that all Facilities have a uniform medical records procedure, provide in service training to Facility employees and work with the OHS to develop and implement any suggested improvements to the medical records system.

⁵ The DOC Health Services policies are available at <http://www.doc.delaware.gov/> (see Chapter 11).

(4) Medication and Laboratory Orders:

DOC policy requires that Facility medical staff ensure timely responses to medication orders and laboratory tests. Practitioners have access through a secured Internet portal to view lab results from the laboratory services vendor. Each Facility has also implemented a lab log to track laboratory orders, labs drawn, results received and Provider review of the results to ensure that the laboratory process is followed within the appropriate time frames. The Audit Tool is also being used to monitor compliance with DOC policy.

(5) Job Descriptions and Licensure:

CMS reports that it continues to ensure that all staff members are appropriately licensed and credentialed. The Regional Medical Director conducts a peer review of all practitioners on a quarterly basis. Under the DOC-CMS contract, CMS is required to provide the DOC with an updated certification list on a monthly basis. Once received, the OHS Senior Fiscal Officer reviews the certification list to ensure its accuracy and request additional detail, when indicated. Over the past few months a number of questions were raised about nurses on probationary status. These were brought up with the vendor. The OHS also has routine communication with the Board of Nursing regarding licensure and other issues related to nursing scope of practice.

(6) Staffing:

The DOC currently employs a Health Director, who oversees management of DOC health care services; a Mental Health Treatment Services Specialist; Substance Abuse Treatment Service Specialist; Compliance Coordinator; Quality Assurance Administrator; Administrative Assistant; and Senior Fiscal Administrative Officer in the OHS. Further, an Advanced Practice Nurse (“APN”) is set to start her employment with the DOC on January 5, 2009. The DOC is currently recruiting for a Medical Director, Nurse Trainer and Nurse Utilization Reviewer to assist with ensuring compliance with the requirements of the DOC Health Services policies, NCCHC standards and the MOA. The DOC APN, Quality Assurance Administrator and Medical Director will study and train with the Monitoring Team during the 2009 monitoring cycles. Along with additional members of the OHS staff, the APN, Quality Assurance Administrator and Chief Physician will work to implement a DOC driven monitoring process. The DOC has requested in the 2010 State Fiscal Year budget an Administrative change from the Office of

Health Services to the Bureau of Correctional Healthcare Services. DOC anticipates this change will be noted in the Governor's recommended budget being presented in mid January 2009.

As was reported in the July 30, 2007 DOC Compliance Report, 39.15 new health care staff positions were approved by the Delaware DOC, representing a 20% increase in staffing, and the July 1, 2007 contract with CMS was renegotiated to fund those additional positions. The Delaware General Assembly subsequently approved the budget required to fund these new positions. The DOC has contractual remedies available for addressing staffing deficiencies under the July 1, 2007 contract with CMS, and continues to actively monitor performance in this area. CMS provides the DOC a monthly report regarding vacant positions and the recruitment efforts being made to fill the vacancies.

As of December 1, 2008, CMS reported that they were staffed at 90.59% for all DOC facilities. CMS is required to fill any vacancies with PRN, overtime or agency staffing to ensure that a full compliment of staff is on site at all times. CMS indicates that its recruiting efforts are ongoing to fulfill any current or anticipated vacancies. CMS offers enhanced recruitment plans with incentives in order to bolster its efforts to obtain potential employment candidates. Further, CMS reports that it has offered enhanced orientation and cross training of current employees along with Facility specific research in order to improve staff retention.

(7) Medical and Mental Health Staff Management:

In addition to management services provided by the DOC OHS personnel described above, medical and mental health staff management is provided through the CMS regional office in Dover, DE. The CMS regional office staff includes a Regional Ombudsman, a Regional Medical Director, Dietician, Regional Dental Director, Regional Psychology Director, Senior Regional Administrator, Regional Director of Nursing and Vice President of Operations. Currently, the Regional Mental Health Director and Regional Medical Records Supervisor positions are vacant.

At HRYCI, SCI, and DCC, a full-time site DON and HSA are currently employed to manage the health care services at each of those Facilities. BWCI currently has a DON employed and is recruiting to fill a vacant HSA position. Because a large population of offenders is housed at DCC, a full-time assistant DON and assistant HSA are also included in the staffing at that

Facility, and those positions were filled as of the date of this Report. All Facilities have a full-time Mental Health Director employed to oversee the mental health care of the offenders. DCC and HRYCI also employ full-time Ph.D. Clinical Directors.

(8) Medical and Mental Health Staff Training:

CMS currently provides monthly in-service training for both medical and mental health staff. In addition, all mental health professionals employed by CMS and providing services at the Facilities are trained and legally qualified to provide mental health counseling services under guidelines established by the State of Delaware. CMS has provided targeted training to the DON staff to ensure consistent processes at all Facilities. In January 2009, the Infection Control Nurses and Administrative Assistants at all Facilities will begin to receive targeted training in relation to providing statewide consistency to their job responsibilities. OHS continues to work with the DOC Employee Development Center (“EDC”) to ensure that appropriate DOC staff is trained on medical and mental health needs of offenders. All documentation regarding training attendance, curriculum and records is kept at the DOC Administration Office and is available for the Monitoring Team’s review.

(9) Security Staff Training:

Please see response to numbers (28), (32) and (43).

(10) Medical Screening:

Intake nurses complete an intake medical and mental health screening form using the DACS system. DOC policies require the intake medical screening be performed within two hours of arrival at a Facility. This screening is performed by nursing staff, and includes a mental health screening. If an inmate answers “yes” to any mental health screening questions, the inmate automatically receives a referral and assessment by a mental health professional within twenty-four hours. Additionally, nurses performing intake screening also have discretion to refer offenders for a mental health assessment. DOC policy requires the intake nurse to call mental health staff immediately if he or she believes the person poses a risk to themselves or others. In addition to mental health issues, the medical screening is structured to address serious medical conditions, and to identify acute medical needs, infectious diseases, chronic conditions, physical disabilities, and potential for drug and alcohol withdrawal. Once the information is entered into

DACS, the appropriate medical and mental health appointments are automatically scheduled for the offender within the required time frames. The intake screening nurse has the ability to prioritize appointments if the offender needs to be seen by a Provider prior to a routine scheduled appointment. At DCC, intake screenings are being performed by RN staff and all other Facilities have the DON or an RN review the intake screening to ensure compliance with bridge order medications, appropriate appointments and any other issues raised at intake are fully addressed. To ensure that all offenders receive a full and adequate intake screening, the DACS system provides monitoring reports indicating whether required intake screenings have been performed and the percentage performed within time frames required under DOC policies. These reports are available to OHS, as well as the HSAs and DONs at each Facility, and are used by the DOC and CMS to ensure compliance with DOC intake screening policies. In addition to other metrics, OHS measures utilization of DACS when auditing CMS pursuant to the contract between DOC and CMS.

(11) Privacy:

Please see response to (18).

(12) Health Assessments:

According to DOC policy, a health assessment is performed within seven days of an offender's arrival at a Facility. When the intake process is completed, DACS automatically schedules appointments for the inmate's health assessment and tuberculosis skin test checks (if applicable), as well as appointments to address any mental health, chronic care, or other significant health care needs identified during intake. Further, once the initial health assessment is completed, DACS automatically schedules all follow up periodic health assessment appointments. Pursuant to DOC policy, a chronic care patient will be assessed based on level of acuity, but at least annually, while offenders less than 40 years of age are to have a periodic health assessment every five years. Offenders over 40 years of age are to have a periodic health assessment every other year.

Under NCCHC standards and the DOC's policies, any offender who was previously incarcerated in a Delaware DOC facility and received a health assessment within the previous twelve months now receives an intake screening, as well as a chart review performed by medical staff. If the

chart review and intake screening do not indicate any change in the offender's health status from the prior health assessment, a new full health assessment is not required. The offender will attend an abbreviated initial physical appointment with a Provider to see if there are any issues that the inmate would like to discuss since his last physical appointment. The notes of the appointment are maintained in the Progress Notes portion of the unified medical record to document that the appointment occurred and any issues discussed with the offender. Monitoring reports generated by DACS are available to the OHS, HSAs and DONs to ensure compliance with the time frames established under this policy and to track health assessments.

(13) Referrals for Specialty Care:

The DOC policies require referrals for specialty care to be completed within 40 days of the initial referral date. For routine requests with wait times exceeding 30 days, the patient is to be seen by the primary care physician at 30-day intervals. If the primary physician believes that the clinical presentation warrants more expeditious scheduling of the appointment, the Regional Medical Director is contacted and is responsible for assuring that necessary arrangements are made. The efforts to expedite the appointment are documented in the progress note. DOC policy requires follow-up requests to be scheduled in accordance with the outside consultant's recommendations unless the primary care practitioner documents an alternative plan in the medical record.

Since January 1, 2008, over 2,255 outside consult appointments have been provided to offenders. In March 2008, CMS implemented a policy requiring follow-up forms to be used at all Facilities to assist in tracking offender care upon return from an outside consult. Continual training on use of the nursing form is being provided at all Facilities. Beginning January 2009, a statewide consult tracking form will be used at all Facilities to ensure uniform and consistent tracking. Further, the DOC Audit Tool provides for quarterly monitoring of this process to ensure compliance. Any failure to adhere to DOC policy may result in the imposition of contractual penalties on CMS.

Specialty care referrals are also being monitored through the Facility quality assurance process and monthly reporting of specialty care logs by the Facility HSA; OHS reviews these reports to ensure compliance with DOC policy. The specialty care consult reports are required under the DOC contract with CMS and are generated monthly. The same specialty care consult reports are

also produced by CMS for analysis and discussion at monthly Medical Audit Committee (“MAC”) meetings, and the upgraded DACS system has also enhanced the DOC’s ability to track outside consults. Problems and delays identified through these efforts are addressed on an ongoing basis by CMS and OHS staff.

(14) Treatment or Accommodation Plans:

Offenders with significant medical conditions whose behavioral issues may compromise their medical care or those with extreme or complex medical issues are classified as Special Needs patients. Members of OHS, Facility medical and mental health staff along with Facility security staff meet on a routine basis to discuss the offenders’ medical issues, strategies for dealing with the issues, outcomes to achieve and plans of action on how to achieve those goals. Notes from the meetings are documented in the offender’s medical record and updated as required. Currently, each site HSA receives notification from the DOC Classification Department of any offenders scheduled for release within thirty days. The HSA also has access to offenders’ release information through the DACS system. The HSA forwards the list of imminent releases to the appropriate medical, mental health and dental disciplines for discharge and after-care planning. Discharge planning is performed for offenders with serious medical or mental health issues, and a record of the plan is maintained in the offender’s medical record. The Facility Infection Control Nurse has attended specialized training for discharge planning, and is responsible for all discharge planning for offenders with HIV diagnoses. CMS and the DOC continue to work collaboratively to ensure proper tracking of released offenders is completed so inmates are released with appropriate medications, appointments and any other assistance needed upon release. The Quality Assurance Administrator will also be implementing a CQI process to monitor compliance with this MOA requirement.

(15) Drug and Alcohol Withdrawal:

DOC policy provides that offenders experiencing either life threatening intoxication or withdrawal are sent to the appropriate setting to address their condition, up to and including an acute care facility, as clinically indicated. Additionally, the Regional Medical Director, in coordination with the OHS and in response to recommendations from the Monitoring Team, has revised the nursing protocols for alcohol and drug withdrawal. Training was provided to the medical staff on the updated protocols, and the new protocols have been implemented at all

Facilities. Under the MOA, methadone maintenance is offered to pregnant offenders who are addicted to opiates and/or participating in a legitimate methadone maintenance program when they enter a Facility.

The DOC has made arrangements for methadone maintenance to be provided through a State-approved methadone clinic for pregnant offenders who have been identified as candidates for methadone maintenance since the MOA went into effect. The DOC is also currently working with the Delaware Division of Substance Abuse and Mental Health to develop protocols for methadone maintenance during pregnancy and notes that a specialist managing an addicted offender's pregnancy may conclude that methadone maintenance is contraindicated in some circumstances. The DOC anticipates that if this occurs, methadone would be used to manage the pregnant inmate's withdrawal from opiates under the direction of an appropriate specialist.

(16) Pregnant Offenders:

As of the date of this report, CMS was providing obstetrics care and treatment for eleven pregnant females. During the intake screening, all females receive a urine pregnancy test. Any female with a positive pregnancy test result is placed on the pregnancy log, receives prenatal vitamins, and is managed by the Facility's OB/Gyn Provider. Pregnant offenders are given appointments with the OB/Gyn nurse practitioner and must be seen by the nurse practitioner within seven days of initial intake.

After the OB/Gyn nurse practitioner performs an assessment, the schedule for ongoing treatment is based on the pregnant inmate's particular needs. If complications arise, immediate consultation with the OB/GYN nurse practitioner is provided. If clinically indicated, the OB/Gyn nurse practitioner will refer the inmate to the obstetrician. In addition, the OB/Gyn nurse practitioner is at Baylor on a weekly basis to evaluate pregnant offenders. Pregnant inmates with HIV disease are also seen by an HIV specialist, who coordinates care with the OB/Gyn practitioner. This coordination helps to assure that appropriate medications are given to prevent perinatal transmission of HIV. Compliance with this policy is monitored on a quarterly basis through the DOC-CMS contractual audits.

(17) Communicable and Infectious Disease Management:

CMS employs Infection Control Coordinators at all of the Facilities. DOC policy and State DPH regulations, sets out specific guidelines regarding the type of monitoring that must be conducted for certain types of infectious disease. Offenders with communicable diseases are tracked and monitored by OHS and the Facility Infection Control Coordinator using information collected in DACS through the intake screening, health assessment and other relevant databases to ensure compliance with MOA and DOC standards. Monthly reports are sent to the OHS by CMS for analysis, and communicable disease reports are provided to the DPH as required. CMS reports that it has also restructured its HIV and Hepatitis C management programs in an effort to provide improved offender care from initial enrollment into the program through release from DOC. This includes additional training for infectious disease nurses and practitioners, offender dietary consultation and offender mental health intervention. All communicable and infectious disease statistics are available for review at each Facility by the Monitoring Team.

(18) Clinic Space and Equipment:

The DOC has been working with CMS to identify additional space in the Facilities for examination and treatment, medical records and equipment storage, and staff offices. These efforts have led to the relocation of administrative space and medication storage at BWCI. The new administrative area and medication dispensary is now located across the hall of the current medical facility. Relocating the administrative area made space available for four additional examination rooms in the medical facility. All appointments are now held in the examination rooms, thus enhancing the privacy of health care services provided at BWCI. The examination rooms are also being equipped with new exam tables, desks, computers and uniform examination equipment. The new administrative area now houses all office space for medical management and administrative staff along with the current offender medical records. In addition to the equipment DOC purchased for the new exam space, DOC purchased computers, storage equipment and desks for the administrative area. The administrative area also houses the relocated medication storage and dispensary area, which has been built with all new equipment and lockable cabinetry. Finally, additional office space has been created for the staff Psychiatrist at BWCI.

At HRYCI, new office space was created for the mental health staff. The relocated office area provides almost double the amount of workspace previously available to the staff. DOC has purchased new computer equipment, desks and any other items necessary to complete the relocation and make the area user friendly for the mental health staff.

At SCI, contracts have been initiated for the mental health and dental office spaces and examination rooms. Construction of the additional space should commence by the spring 2009 with completion expected within four months. Further, expansion plans have been approved for the current medical space and the process for bids has begun. Once completed, the expansion will add another 1,400 square feet to the outpatient services area which will in turn create additional space for inpatient services for offenders.

At DCC, one of the Special Needs Units (“SNU”) has been relocated to the general population area of the compound. Offenders who are housed in this unit have greater access to commissary, visitation, education, employment and other DOC privileges, if they are so eligible. Renovations are currently underway in the Infirmary area that will make new examination and office space for the Provider and the mental health staff. Further, the DOC is in the process of relocating the medical and mental health administrative space in the Security Housing Unit (“SHU”) to provide staff with additional workspace. In January 2009, Facility management and OHS will perform a use management analysis of the general population medical clinic to discover whether medical appointments and Provider clinics can be expanded to accommodate offender mental health interviews with clinicians. Presently, these encounters often take place in various locations, outside the clinic, throughout the facility. The DOC is working to ensure that mental health interviews take place in a private setting, to the extent permitted by security needs.

The DOC has purchased new equipment and replaced or repaired outdated equipment where necessary. This includes, since January 2008, the purchase of new stretchers, IV pumps, exam tables, hospital beds, lifts, dental autoclaves and other medical equipment. Additional equipment needs are being evaluated and addressed by OHS as they arise.

As was discussed in the DOC's July 2007 Compliance Report,⁶ each Facility implemented an action plan to address cleanliness issues raised in the first Monitor's Report. Under that plan, primary responsibility for cleaning floors, walls, and providing any other janitorial services in the medical units now rests with the DOC. CMS is responsible for tasks that are inappropriate for inmate workers, as well as for cleaning, de-cluttering and organizing areas that are primarily under CMS control. For example, CMS is responsible for sharps and hazardous waste disposal, and for maintaining medication preparation surfaces and medication carts. Each Facility continues to monitor medical unit cleanliness under the action plan; the DOC and CMS jointly perform environmental inspection rounds on a monthly basis to ensure that the medical units are conforming to NCCHC standards for cleanliness.

Finally, DOC actively continues to research options for expanding medical and mental health treatment space at all of the Facilities. A consulting firm retained by the DOC has completed a construction and remodeling feasibility study and evaluated clinic space issues at each Facility. A copy of this study has been provided to the Monitoring Team.

ACCESS TO CARE

(19) Access to Medical and Mental Health Services:

Currently, offenders who want to obtain health or mental health care services fill out and submit a sick call form. This is a generic form used for all medical, mental health and dental requests. Inmates submit the forms into a secure repository, a process that preserves the confidentiality of inmate health information. Nursing staff are required to collect sick call requests on a daily basis and distribute the requests to the appropriate medical unit providers. CMS personnel responsible for collecting sick call forms are required to fill out a "pick up" sheet documenting that the daily collection is made. The DOC performs randomly scheduled reviews of the pick up logs, which allows the OHS to monitor compliance with this policy. Additionally, enhancements to DACS now allow the OHS to monitor compliance with sick call policies as part of its quality assurance process. For example, nurse sick call reports are printed from DACS and used in DOC-CMS contractual quarterly audits. Compliance with daily collection requirements, adherence to sick

⁶ See Delaware Department of Correction Compliance Report, at 7 and Appendix 4, *available at*: <http://doc.delaware.gov/Compliance%20Report.pdf>.

call protocols, and the provision of face-to-face evaluations and follow-up care are some of the issues being monitored during these quarterly audits. A staffing analysis will be conducted by the DOC to determine whether Facility RN staffing should be supplemented in order to assure that all sick call visits are performed by registered nurses. CMS reports that it has also implemented site-specific procedures, CQI studies and nursing protocol forms to ensure that the sick call process is being performed within the required time frames and that the services provided are medically appropriate.

(20) Isolation Rounds:

CMS reports that it currently follows NCCHC standards regarding medical care for segregated offenders. A patient roster is printed from DACS and reviewed at the time the rounds are conducted to ensure all patients are seen in accordance with DOC policy and NCCHC standards. Additional documentation of rounds made on mental health patients is maintained in the inmate medical record. Segregation logs are maintained at the Facility in a central location and copies are sent to the CMS Regional Mental Health Director on a monthly basis for review. In the event an inmate is referred for follow-up medical or mental health treatment, this information is documented in the inmate's medical record. Further, DOC policy requires that sick call rounds be conducted on a daily basis by nursing staff.

(21) Grievances:

Pursuant to DOC policy, the time transpiring between the date of an initial medical grievance and the final appeal response is not to exceed 180 days. As of December 22, 2008, there were no outstanding medical grievances over 180 days at BWCI, SCI, or HRYCI. Currently there are 23 outstanding grievances at DCC that exceed 180 days from the time of filing. Due to the large number of medical grievances at DCC, the CMS Regional Ombudsman continues to devote a majority of her time investigating and resolving the outstanding medical grievances at this location. DOC and CMS continue to work collaboratively on reducing both the number of outstanding grievances and the time required for resolving grievances. Under the DOC – CMS contract, the proper and timely resolution of medical grievances is the responsibility of CMS and requires the participation of CMS staff. Nevertheless, DOC has also provided additional staffing to facilitate and expedite the process of resolving grievances at all Facilities. Unresolved

grievances reports are produced in DACS to track outstanding grievances by the OHS and Facility medical management.

Previously, all medical and mental health grievances were filed in DACS under a generic “Health Issues” category. In order to track trends and issues with grievances, three separate categories were created to differentiate between mental health, dental and medical grievances. After the initial investigation is completed on the medical grievance, a hearing before the Medical Grievance Committee (“MGC”) can be requested if the inmate is not satisfied with the initial response to the grievance.

To protect the confidentiality of an inmate’s information, three members of the medical vendor staff and/or OHS staff conduct MGC hearings. DOC grievance officers are also present to record the hearing information in DACS along with any other DOC staff as security needs dictate. These are in-person hearings where the inmate has the opportunity to discuss the medical grievance. After listening to inmate testimony and reviewing the inmate’s medical file, the MGC decides whether to uphold or deny the inmate’s grievance. The DOC has also developed an MGC log, which is used to track follow-up on MGC decisions. The log contains information regarding cases heard by the MGC, the date of the hearing, and whether decisions were upheld and require follow-up (*e.g.*, a physician visit). Further, if an inmate’s grievance was denied by the MGC, the HSA and site Medical Director review the inmate’s grievance with the inmate and explain the reason for the denial. Upon the completion of a MGC hearing, the site HSA is responsible for compiling data for the MGC log and producing its contents to the OHS within two business days. During the subsequent month’s Facility MAC meeting, the HSA is required to provide updates on the grievances in the MGC log with the date that resolution occurred. This ensures that grievance outcomes promised to the inmate at the time of the MGC hearing are appropriately tracked and that the Facility HSA addresses systemic issues.

CHRONIC DISEASE CARE

(22) Chronic Disease Management:

If an inmate presents with chronic care needs at intake or sick call, DOC policy requires the nurse to complete a chronic care referral form to initiate a clinical evaluation. At the conclusion of the clinical evaluation, the clinician is required to document a treatment plan. The treatment plan should include diagnostic and therapeutic interventions, along with patient education for each chronic illness. The clinician determines the frequency of chronic care appointments, based on the degree of disease control being achieved and maintained.

The Provider is expected to order medications and laboratory tests as needed, and to time those orders so that medications do not run out before the next visit and so that laboratory test results are available at the time of the next appointment. CMS is required to follow NCCHC standards for chronic disease care and treatment, and these standards are outlined in the CMS Chronic Care Guidelines handbook. Further, the DACS scheduling function for chronic care appointments automatically schedules the next inmate visit within the time frame indicated by the Provider. Continual monitoring using DACS reports, the Audit Tool and the site quality assurance process ensure compliance with chronic care policies and standards.

(23) Immunizations:

As of December 22, 2008, 36 juveniles were housed at HRYCI. Upon intake, the Infection Control Coordinator reviews the juvenile's immunization history. CMS continues to work collaboratively with DOC, the Delaware Department of Services for Children, Youth and Their Families and the DPH Immunization Program to obtain the records, if available, of all juveniles housed in DOC facilities. One tool being used by the DOC and CMS to assist in this process is the State's immunization records online data bank (known as "VACAttack"), which allows the Infection Control Nurse access to the State's data regarding all immunizations that were administered in Delaware. Once juvenile immunization information has been obtained, the DOC ensures that CMS updates the juvenile's immunizations as needed, in accordance with nationally recognized guidelines and Delaware school admission requirements.

In addition, DOC has obtained Hepatitis A and Hepatitis B vaccinations for 1520 offenders and about 200 DOC security staff. DOC is working collaboratively with CMS to identify offenders who are candidates for the hepatitis immunizations because of chronic conditions or other risk factors. All immunization information is maintained in the inmate's unified medical record. Flu vaccinations were also made available to offenders at all DOC Facilities to both offenders and DOC staff.

MEDICATION

(24) Medication Administration and (25) Continuity of Medication:

Nurses are required to provide medications at times reflected on the Medication Administration Records ("MAR"), in accordance with medication orders. Normally, first medication passes are done during the morning hours, with a second and third medication pass occurring during the afternoon and evening hours, respectively. Additional passes include lunchtime blood glucose checks and insulin injections as indicated. CMS and DOC continue to work collaboratively to ensure that medication passes are performed within the appropriate time frame. At DCC, nursing schedules were re-adjusted, offender meals times were changed and staffing enhanced to ensure that offenders received their medications in a timely manner.

At the end of a shift, the medication administration nurse reviews the Medication Administration Records to identify patients who missed or declined medications, and is required to follow up appropriately. If a patient is non-compliant for three consecutive doses of medication, the patient is scheduled to meet with a Provider to discuss the noncompliance and its possible ramifications for the inmate's medical treatment. Pursuant to DOC policy, the site DON consistently monitors medication administration, with ongoing medication administration education provided to staff responsible for distributing medication to offenders. Additional in service training has been provided to the nursing staff regarding proper MAR documentation and narcotics accountability. Further monitoring of this policy is conducted through quarterly DOC-CMS contractual audits and the Facility's quality assurance process to ensure that new medication orders are implemented and delivered in a timely manner. This process is also used to monitor ongoing compliance with the medication scheduled ordered by a Provider, the appropriate maintenance of MARs, and medication continuity.

(26) Medication Management:

DOC policy requires medication storage rooms to be locked at all times, and inspections by DOC compliance personnel confirm adherence to this policy. Keys to medication rooms are kept with a member of the nursing staff and used to enter and exit the dispensary. CMS currently has two different policies governing medication disposal. For narcotics and other controlled substances, a log is maintained at each Facility documenting the receipt, administration, and disposal of the medication. All other medications that are discontinued (because an inmate has been released or for medical reasons) are returned to the vendor pharmacy by CMS. In addition, CMS had Clinical Programs personnel from their corporate site visit each Facility and provide assistance in reorganization of the medication storage rooms. Medication storage is being reviewed to ensure par levels of medications are maintained and whether stock medication is appropriate.

EMERGENCY CARE

(27) Access to Emergency Care:

Offenders who require acute emergency care are transported from a Facility to an offsite health care Provider for emergency evaluation and treatment as necessary. Since January 2008, over 300 offenders have received more than 1331 days of offsite acute emergency care. The Regional Medical Director reviews each emergency care case to ensure that staff took appropriate measures before the emergency occurred, and to identify alternatives that might have averted the emergency and the need for acute care.

(28) First Responder Assistance:

Currently, all DOC correctional employees attend a nine-week course, "Correctional Employee Initial Training," which is provided by the DOC, before commencing employment at a DOC Facility. During this training, all security staff receives seven hours of CPR training and an additional seven hours of First Aid training. First Aid training includes the use of an emergency cut-down tool. This class also includes training on Automatic Emergency Defibrillator machines. All security staff receives another seven hours of training on "Special Medical Topics." This class provides training on such issues as contagious disease and blood borne pathogens. CMS medical professionals teach all three classes.

In addition to the initial orientation training, security staff receives yearly refresher training on CPR, First Aid, and use of Automatic Emergency Defibrillator machines. Refresher training for “Special Medical Topics” is provided every three years. All security staff employees are issued equipment to be used during first line emergency response (CPR masks, latex gloves and a glove pouch) as part of their uniforms. Additionally, emergency cut-down tools have been distributed at all DOC facilities and are readily accessible to staff. Logs of employee training attendance are maintained by the DOC Employee Development Center located at the DOC Central Administration Building and available for inspection by the Monitoring Team.

MENTAL HEALTH CARE

(29) Treatment:

Mental Health Services are available to all offenders at each Facility; qualified mental health professionals provide these services.

(30) Psychiatrist Staffing:

CMS reports on its November, 2008 recruitment report that all Psychiatry positions are filled.

When an inmate receives care from a Psychiatrist, a mental health clinician is present during the visit to take notes and document modifications to the treatment plan as needed. The Psychiatrist oversees Mental Health Treatment team meetings, which are conducted between the Psychiatrist, clinician, and inmate. To expand coverage of psychiatric services, on January 14, 2008, DOC launched a tele-psychiatry program. This program allows the Psychiatrist located in the Northern region of Delaware to provide services to offenders at SCI through a video-conferencing system. CMS reports that about 80 offenders receive services through tele-psychiatry per month. However, with the recent addition of a on-site psychiatry hours at SCI, the need for tele-psychiatry will decline. DOC will conduct a staffing analysis at all Facilities to ensure the hours of Psychiatrist care is appropriate.

(31) Administration of Mental Health Medications:

DOC has implemented a set of clinical protocols that set forth laboratory tests required for patients being treated with psychotropic medications. A psychiatric nurse is assigned at DCC for the SNU housing units. The nurse monitors psychiatric medications prescribed to offenders in these units to ensure continuity of the medications and evaluate potential side effects. All medication distribution, including psychotropic medication, is documented on the offender's MAR. Additional monitoring of compliance with policies and protocols relating to the administration of mental health medications occurs through quarterly DOC-CMS contractual audits and the Facility's quality assurance process. In particular, these tools are used to ensure that prescribed medications are received in a timely manner. These processes are also used to monitor and improve medication continuity, adherence to daily medication administration schedules, and the maintenance of appropriately documented MARs.

(32) Mental Illness Training:

During the seven-hour initial training course regarding "Special Medical Topics," DOC staff receive instruction on various issues regarding mental illness. The course is taught by a qualified health professional from CMS. This training teaches DOC staff to make observations based on mental health needs and to request behavioral observation and referral to Mental Health Staff when needed. Refresher training for this topic is provided every three years; with the most recent training occurring in 2008. Further, additional training for all security staff assigned to the DCC SNU housing areas has been provided. Logs of employee training and attendance are maintained by the DOC Employee Development Center, located at the DOC Central Administration Building, and are available for inspection by the Monitoring Team.

(33) Mental Health Screening:

As noted in the Screening and Treatment section of this report, a mental health screening is performed on each incoming inmate as part of the initial intake screening. If an inmate answers "yes" to any questions on the mental health portion of the screening, the inmate automatically receives a mental health referral through the DACS system and assessment by a mental health professional within twenty-four hours. Additionally, as is discussed in greater detail below and in ¶ 10, the nurse performing an intake screening has discretion to refer an offender to mental

health if the referral is believed to be necessary, even in the absence of positive responses on the mental health portion of the screening.

(34) Mental Health Assessment and Referral:

Any medical or mental health professional can refer an offender to psychiatry. Additionally, any DOC or vendor staff can ask for a mental health assessment if the situation warrants. When a referral is made, the offender will be seen for a mental health assessment, which is to be completed within five to ten days from the date of the referral. To assure confidentiality, any self-referrals for mental health treatment are made through the sick call procedure. Random audits of sick call pick-up logs and quarterly use of the Audit Tool at all Facilities help ensure adequate response times to sick call requests for mental health issues.

(35) Mental Health Treatment Plans:

Treatment plans are initiated by a mental health professional at the first visit and reviewed at least every three months by the Mental Health Treatment team. Each Facility maintains a Mental Health roster that lists each individual inmate who is receiving mental health services, their diagnosis and current mental health medications. The list also specifies the date of the next treatment plan review scheduled for the inmate to ensure that the reviews are performed in a timely manner. Inmate mental health treatment plans are maintained in the inmate's unified medical record.

(36) Crisis Services:

When a crisis situation occurs, the inmate is immediately assessed by a mental health professional. Less severe situations could involve an inmate who requires only short-term monitoring or psychiatric observation. The most extreme cases result in referral and transfer to the Delaware Psychiatric Center ("DPC") or an acute care facility, as clinically indicated. The OHS meets on a monthly basis with DPC staff and DOC security to discuss the movement of DOC inmates to and from DPC, in order to promote continuity of care for the offender. When clinically indicated, an inmate at the Facility who becomes a risk for harm to self or others may require therapeutic restraints or involuntarily medication. A DOC policy regarding use of involuntary medication was submitted to the DOJ and approved. Since January 2008, fifteen offenders were given involuntary medication under such circumstances, and four offenders

required therapeutic restraints. When these measures are not successful in stabilizing the inmate, the inmate is transported to an acute care hospital. DOC policies prohibit the use of administrative/disciplinary isolation in response to psychiatric emergencies.

(37) Treatment for Seriously Mentally Ill Offenders:

Currently there are various programs for offenders with mental health needs that include screening, assessment, routine mental health counseling (occurring on a monthly basis, at minimum), psychopharmacological intervention with a review by a Psychiatrist at least every 90 days, group treatment, SNU housing and psychiatric observation for offenders who are either suicidal or have decompensated to the extent that they cannot be safely managed in their normal housing unit. If an inmate cannot be managed with mental health services provided at the Facility, a referral to Delaware Psychiatric Center is made.

(38) Review of Disciplinary Charges for Mental Illness Symptoms:

DOC has implemented a policy that requires medical staff to review the medical records of all offenders who are placed in segregation. The policy requires that medical staff identify inmates placed in isolation who have a history of mental illness. Once identified, a referral is made to mental health staff. Mental health staff are required to perform an assessment to identify any contraindications to the placement in segregation. If any DOC or CMS staff believe that an inmate's mental health condition is related to or may have contributed to their disciplinary charges, the inmate is referred to a mental health professional for assessment. The mental health professional provides recommendations based on that assessment to the security staff conducting the disciplinary hearing. The OHS Mental Health Treatment Administrator will provide training to all mental health staff at the Facilities to ensure proper compliance with this policy.

(39) Procedures for Mentally Ill Offenders in Isolation or Observation Status:

As noted above, a referral is made to mental health for offenders placed in isolation who are currently, or have a history of, receiving mental health treatment. For these offenders, rounds are performed three times each week by mental health staff, which exceeds the once a week requirement established in the MOA. The Facility Psychiatrist is required to review documentation regarding the mental health rounds. As is discussed in ¶ 38, mental health staff

communicates any concerns regarding contraindications to segregation, and custody staff is required to respond appropriately.

(40) Mental Health Service Logs and Documentation:

As noted above, the mental health clinicians at each Facility maintain a Mental Health roster listing each individual receiving mental health services, diagnosis, mental health medications and dates for upcoming mental health treatment appointments. The roster is currently accessible by all mental health employees at each Facility. Further, the roster for all Facilities is provided to the OHS Mental Health Treatment Administrator for his review on a monthly basis.

SUICIDE PREVENTION

(41) Suicide Prevention Policy:

On November 19, 2007, DOC implemented its Suicide Prevention Policy. On May 9, 2008, DOC submitted revisions to its November 19, 2007 policy at the recommendation of the Monitoring Team. The revised policy was approved and has been implemented.

(42) Suicide Prevention Training Curriculum:

DOC worked collaboratively with the Monitoring Team Mental Health experts to draft the Suicide Prevention Training Curriculum and policy. The curriculum, at a minimum, addresses the DOC Suicide Prevention policy, the ways in which the Facility environment may contribute to suicidal behavior, potential predisposition factors to suicide, high risk suicide periods, case studies of recent suicides and serious suicide attempts, mock demonstrations and proper use of emergency equipment. Upon approval from the DOJ, the DOC implemented its Suicide Prevention Refresher Training curriculum. The training is being offered online to the security staff and is ongoing.

(43) Staff Training:

The DOC Action Plan states that Suicide Training will be provided to the entire DOC security staff by January 1, 2008. As of the date of this report, Facilities report that all security staff available (unavailable staff include those who have been out on military leave or extended medical leave) have received the required training. Courses are ongoing, and will continue to be

provided to all new hires after existing staff are trained. Each Facility training coordinator maintains training records. Copies of the training records are also sent to CMS to record medical and mental health staff attendance of Suicide Prevention training at all Facilities. Additional copies of the training records are maintained at the DOC Central Administration Building by the OHS Senior Fiscal Administrative Officer, and are available for the Monitoring Team's review.

(44) Intake Screening/Assessment:

Currently, the DOC uses an intake screening that covers all of the required areas listed in the MOA. A mental health assessment is provided for those patients whose screening indicates any positive answer to the screening tool.

(45) Mental Health Records:

An inmate who reports a significant medical or mental health history or recent mental health hospitalization at intake is asked to complete a release of information form. The medical and mental health staff requests the relevant medical documents from outside providers. The CMS medical records staff are responsible for forwarding the request for documents to the appropriate health care Provider(s). Once received, the records are filed with and become a part of the inmate's unified medical record. CMS is currently working to improve the process of obtaining relevant information from the outside providers.

(46) Identification of Offenders at Risk of Suicide & (47) Suicide Risk Assessment:

When an inmate is identified as at risk for suicide, the inmate is kept under constant supervision, mental health/medical is contacted immediately and an order is obtained to place the inmate on psychiatric observation. The inmate is also assessed by a qualified mental health professional as soon as possible and no later than twenty-four hours after the risk has been identified.

(48) Communication:

All steps taken relating to inmate suicide precautions are documented by the CMS and DOC staff responsible for carrying out those steps, and become part of the inmate's unified medical record. Multi-disciplinary team meetings are also conducted on a weekly basis regarding the inmate's stability and their status on suicide precautions. Offenders are not downgraded or discharged from suicide precautions until the responsible medical and mental health care staff has

thoroughly reviewed the inmate's health care record. Mental health staff are instructed to discuss patient progress with custody staff when making decisions regarding downgrade or discharge of observation status.

(49) Housing:

Pursuant to DOC policy, all cells used to house offenders on suicide watch are visible to correctional staff and steps have been taken to improve suicide resistance in cells used for this purpose. For example, breakaway sprinkler heads have been installed in cells used for suicide watch. Mental Health staff determines the level of restriction (what items an inmate may have in their cell) that is appropriate for the inmate based on clinical judgment.

(50) Observation:

At the highest level of psychiatric observation, offenders are observed on a constant basis. Offenders on all levels of psychiatric observation will also be observed on a constant basis while bathing and shaving. All other offenders on observation are monitored at least every fifteen minutes by correctional staff and during each shift by medical staff. A physician performs a physical assessment whenever an inmate is placed on observation. Further, mental health staff assess and interact with all offenders on psychiatric observation status on a daily basis.

(51) "Step-Down Observation":

DOC policies and procedures require step-down levels of observation to be utilized when offenders are released from suicide precautions. All offenders on psychiatric observation can only be downgraded or removed from observation status with an order from a licensed psychologist or psychiatrist. Follow-up assessments are conducted initially within twenty-four hours following discharge from suicide precautions and subsequently as clinically indicated on the individual treatment plan. The DOC-CMS Audit Tool is used to ensure compliance of appropriate suicide observation and follow up treatment on all offenders who were on observation status for the quarter prior to the audit.

(52) Intervention:

This topic is covered under the DOC's response to First Aid/CPR training and Suicide Prevention Training (§ 28).

(53) Mortality and Morbidity Review:

Current policy requires a mortality and morbidity review to be accomplished in the event of a suicide or a serious suicide attempt. Mortality and morbidity reports are completed as indicated, are maintained at the DOC Central Administration Building, and are available for review by the Monitoring Team. The DOC OHS will be conducting and coordinating the reports generated by the morbidity and mortality review.

QUALITY ASSURANCE

(54) Policies and Procedures and (55) Corrective Action Plans:

DOC policies address a number of quality assurance processes. The Quality Improvement Program is being developed by the OHS Quality Assurance Administrator. The Quality Assurance Administrator is working with each Facility HSA and Regional Manager to implement and maintain a Quality Improvement Program. Each site has implemented a Facility Quality Improvement Committee. The Facility will hold monthly meetings to identify, analyze and correct problems that may impede the quality of inmate healthcare. Each Facility has identified committee members and assigned specific teams to conduct CQI studies in their respective areas. The Facility Committee members will also address any areas requiring corrective action as a result of the DOC quarterly contractual audit and internal audits that are scheduled to begin January 2009. The Facility Quality Improvement Committee will meet on a monthly basis to discuss its findings and issue corrective action plans when appropriate. Minutes will be recorded at every meeting. Meeting minutes and CQI results will be shared at monthly staff meetings, site MAC meetings, Quarterly Statewide level CQI meetings, and DOC Statewide Quality Committee.

A Statewide Quality Improvement Committee reviews implementation, maintenance, and monitoring of quality improvement programs at the Facilities. The QI Committee meets on a quarterly basis, reviews all minutes and quarterly reports submitted by the Facility QI committees, and makes recommendations to the Commissioner of Correction as necessary. Further, an annual report will be generated to the Commissioner summarizing areas that have been improved in the past year and those which need improvement. DOC and CMS have formed the committees at the Facility and state levels and have also begun the QI process scheduled for the 2009 calendar year. Adjustments and enhancements to the QI process at each Facility are ongoing. With the addition of the OHS Quality Assurance Administrator, APN and Medical Director, DOC will begin to focus on various areas of the QI process and implementation of action plans in addition to the process being performed by CMS. The Quality Assurance Administrator is currently in the process of compiling comprehensive QA tools to address each area of the MOA. The QA tools will comply with DOC Policies as well as NCCHC standards. The Monitoring Team will be provided copies of the QA tools for solicitation of their suggestions. Copies of the Facility QI Committee minutes are maintained at the CMS regional office and Statewide QI Committee minutes are maintained at the OHS offices. Both sets of documents are available for re view at the Monitoring Team's request.